

**Letter of Findings: 01-20180540
Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual did not establish that he abandoned his Indiana domicile when he worked in another state for the year of 2013.

ISSUES

I. Income Tax–Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-3-3-3; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2013 and thus owed Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of a penalty. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax–Domicile.

DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b)

any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, "a resident" includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2013. Therefore, in order to be considered a resident of Indiana during 2013, Taxpayer must have been domiciled here.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413. **Establishing a new residence or domicile terminates the former domicile.** A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**" *Rogers*, 226 Ind. at 35-36, 77 N.E.2d at 595-96. *Id.* at 1317. (Emphasis added).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside of Indiana and to abandon his domicile in Indiana.

The Department, in a letter dated September 18, 2017, stated that Taxpayer had "established your domicile in Indiana" before 2013 "by taking the Homestead Exemption deduction on your property taxes [for an address in Indiana]" The applicable law for homestead is found at IC § 6-1.1-12-37(a)(2), which states in relevant part:

"Homestead" means an individual's principal place of residence:

(A) **that is located in Indiana;**

(B) **that:**

(i) **the individual owns;**

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; **and**

(C) **that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.**

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

(Emphasis added).

Additionally, when a taxpayer claims the homestead exemption, the dwelling has to be their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). [50 IAC 24-2-5](#) defines that as:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

And, as the court in *Bayh* explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." *Bayh*, at 596.

Taxpayer's representative states in correspondence that the following are the relevant facts of the case:

[Taxpayer] did not file an Indiana Form IT-40 for tax year 2013 because he was not a resident of Indiana. He moved to Atlanta, Georgia in July 2012 to take a job [with Company L]. [Taxpayer] filed both an Indiana and Georgia tax return for 2012. He filed his Indiana return as a part-year resident on Form IT-40PNR. [Taxpayer] became a resident of Georgia during 2012, and he moved there with no intention of moving back to Indiana. In June 2014, [Taxpayer] changed jobs. He took a position with [Company C] in [] Massachusetts.

And further:

Despite having no intention of moving back to Indiana permanently when he moved to Georgia, [Taxpayer] purchased a loft/condo in [Indiana] in September 2014. For work and family purposes, he resided in the condo from September 2014 until July 2017. His current principal place of residence is [another state] but he still owns the [Indiana] condo as an investment property.

He does still own a house in [] Indiana [], but it is not his principal place of residence and has not been since 2010. His mother, uncle, and aunt reside in the [Indiana] house. [Taxpayer] does not live there at all, and only visits occasionally when he travels back to Indiana. While it is true that [Taxpayer] mistakenly forgot to notify the [] County Auditor that his [Indiana] home was no longer his principal place of residence, thereby cancelling his homestead exemption, [Taxpayer] has contacted the Auditor's office and is currently in the process of calculating and remitting the additional property tax due for each year since he left that residence, including associated penalties.

Taxpayer provided the Department with a copy of the "Notice of Ineligible Deduction &/or Credit" from the Indiana county that the home that he owns is in. That county form does not specifically mention 2013's homestead being removed. Although the county form states that the "Reason for Removal of Homestead" is that the "owner has not lived in the home since 2010," the form states "Deductions removed for '17/18" and that "additional tax and civil penalty has been calculated for 16/17; 15/16; 14/15 tax period(s)" In follow-up correspondence, Taxpayer's representative stated that the county is "only able to go back the prior three years to recompute the taxes." Additional documents that Taxpayer provided included a photocopy of his Georgia driver's license (issued in September 2012), W-2 wage information, copies of an unsigned ("For Information Only") 2013 Georgia tax return, and a copy of an apartment's "Resident Handbook."

Pursuant to [45 IAC 3.1-1-22](#), the homestead issue is not the only relevant criteria in determining domicile. To that end, the Department has a "Residency Checklist" form, which contains various relevant questions (e.g., "You and/or your spouse were registered to vote. Identify federal and/or state"). Taxpayer only answered the very first

question on the form, stating that for 2013 that Georgia was the state he lived in for the tax year. However, as noted *supra*, beyond the question of number of days in the state of Indiana there is also the issue of domicile. And thus the question is whether or not Taxpayer has established that he intended to abandon his domicile (the *Bayh* case shows that to change one's domicile there must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish the change of domicile). In the present case Taxpayer has not met his burden of proof found in IC § 6-8.1-5-1(c).

Taxpayer has not established that the homestead exemption for tax year 2013 has been corrected—in fact, from his representative's correspondence, the issue apparently cannot be corrected given the county's three year look back abilities. But irrespective of the homestead issues, by not fully answering the "Residency Checklist," Taxpayer has precluded the Department from having all the relevant facts as it relates to *domicile*. Furthermore, Taxpayer in fact returned to Indiana in 2014 and purchased additional property, which leads to the inference and conclusion that Taxpayer had not in fact abandoned his Indiana domicile when he left in 2012. Lastly, the Department notes that pursuant to IC § 6-3-3-3, Taxpayer may be able to take a credit on his 2013 Indiana income tax return for any applicable taxes paid to the other state for the year at issue.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is *prima facie* correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

Taxpayer did not develop any specific argument regarding the penalty. Taxpayer has not met his burden of proof found in IC § 6-8.1-5-1(c) regarding the penalty.

FINDING

Taxpayer's protest of the imposition of penalty is denied.

SUMMARY

Taxpayer's protest of Issue I is denied; Taxpayer's protest of Issue II is also denied.

June 28, 2018

Posted: 08/29/2018 by Legislative Services Agency
An [html](#) version of this document.